

JUDGE KOELTL

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SANTOS M. VILELLA, an individual,

15 CV 47874

Plaintiff,

Civil Action No.

CHRISTOPHER TORO, MATTHEW
JOSHUA MENDOZA, and STARTER
CORPORATION

JURY TRIAL DEMANDED

Defendants.

**COMPLAINT FOR TRADEMARK INFRINGEMENT,
UNFAIR COMPETITION AND RELATED CLAIMS**

Plaintiff, Santos M. Vilella, alleges his complaint against Defendants, Christopher Toro, Matthew Joshua Mendoza and Starter Corporation as follows:

NATURE OF THE ACTION

1. This action arises from Defendants' infringement of Plaintiff's "ownership" and exclusive "use" rights in the marks LAVISH TRENDS® and LAVISH™, in conjunction with clothing. Despite Plaintiff being the registered owner of the trademark LAVISH TRENDS® and having common law ownership rights in the mark LAVISH™ and offering various clothing items under such brand names, the Defendants' have infringed Plaintiff's rights in the LAVISH™ and LAVISH TRENDS® marks by selling, offering for sale and advertising caps under a confusingly similar mark than that of Plaintiff's trademarks and domain name. Plaintiff has already experienced "actual confusion" in connection with this matter and is likely to continue to experience confusion as to the affiliation or connection between the Defendants' and Plaintiff resulting in the unjust enrichment of Defendants' by using Plaintiff's registered and common law trademarks.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 15 U.S.C. §1051 *et seq.*; 15 U.S.C. Sections 1114-1116; under Section 43(a) of the Trademark Act, 15 U.S.C. §1125(a) and Section 43(c) of the Trademark Act, 15 U.S.C. §1125(c).

3. This Court has personal jurisdiction over the Defendants because Defendants either reside in New York City and/or because Defendants engage in continuous and significant business activities in, and directed to the State of New York within this judicial district, and because Defendants' have committed tortious acts aimed at and causing harm within the State of New York and this judicial district.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) because it is where Plaintiff resides and the Defendants transact business in this district, and because a substantial portion of the events giving rise to the asserted claims have occurred, and continue to occur, within this district. Furthermore, the damage to Plaintiff and its intellectual property described herein continues to occur in this judicial district.

THE PARTIES

5. Plaintiff, Santos M. Vilella is an individual residing in New York, New York with a mailing address at 230 Clinton Street, Apt. #11C, New York, NY 10002.

6. Upon information and belief, Defendant Christopher Toro is an individual residing at 51-29 65th Street - Woodside, New York 11377.

7. Upon information and belief, Defendant Mathew Joshua Mendoza is an individual residing at 85 Remsen Lane, Floral Park, New York 11001.

8. Upon information and belief, Defendant Starter Corporation is a Delaware corporation with a principal place of business at 370 James Street, New Haven, CT 06513.

FACTS

9. Since at least as early as 2012, Plaintiff Santos M. Vilella has been selling and offering for sale, t-shirts, sweaters, hooded sweatshirts and other clothing items under the LAVISH TRENDS® and LAVISH™ brand names.

10. Since at least as early as 2012, Plaintiff has been independently operating a clothing business under the trade name LAVISH TRENDS CLOTHING CO., which has sold t-shirts, sweaters, hooded sweatshirts and other related clothing items under the marks LAVISH TRENDS® and LAVISH™.

11. In addition to selling and offering for sale clothing items under the LAVISH™ and LAVISH TRENDS® brand names, Plaintiff has also continuously sold and offered for sale various clothing items including caps which bear the LAVISH TRENDS® and LAVISH™ marks in various fonts and design styles which are prominently displayed on the front and/or back of the clothing items. (**See Exhibit A**).

12. Plaintiff sells, and promotes the sale of his LAVISH TRENDS® and LAVISH™ clothing via his website www.lavishtrendsny.com, in a retail clothing store in Bronx County and in other ways customary in the clothing business. (**See Exhibit B**).

13. Plaintiff advertises his LAVISH TRENDS® brand and clothing items through flyers, posters, stickers and through grass root street marketing methods.” Plaintiff also regularly conducts photo shoots of customers who purchase his clothing and promotes it on social media platforms including but not limited to Instagram®. (**See Exhibit C**).

14. Plaintiff is the registered owner of United States Trademark Registration No. 4,568,162 for the mark LAVISH TRENDS®. (**See Exhibit D**).

15. Plaintiff is informed and believes and thereon alleges that, Defendants' in conjunction with each other collaborated, manufactured, introduced and began, marketing, selling, offering for sale and distributing caps under the mark LAVISH NYC™ mark.

16. Defendant Starter Corporation is one of the major headwear and clothing manufacturers in the United States with stores and product presence in retail locations all around the world and in New York City and throughout the tri-state area.

17. Defendants sell and offers for sale clothing items bearing the LAVISH NYC™ mark via the website www.LiveLavishNYC.com. (See Exhibit E).

18. Plaintiff has already experienced instances of actual confusion in connection with Defendants' use of a closely related and confusingly similar brand. Plaintiff also believes that he will experience instances of reverse confusion since Defendant Starter Corporation is a much more established clothing and headwear business and entity that has been in business for over 20 years.

FIRST CAUSE OF ACTION

TRADEMARK INFRINGEMENT (15 U.S.C. §§ 1114-1116)

19. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 18 of this Complaint.

20. The use in commerce by Defendant of an identical and slightly identical version of Plaintiff's registered trademark is likely to cause confusion, mistake and deception among members of the public and in trade as to the source, origin, or sponsorship of defendants' goods and services. Such use by defendants constitutes a clear and direct infringement of Plaintiff's rights in and to Plaintiff's registered trademark, and has resulted in injury and damage to Plaintiff that will continue if defendants are not ordered to cease all use of the LAVISH NYC™ mark.

SECOND CAUSE OF ACTION

UNFAIR COMPETITION & FALSE DESIGNATION OF ORIGIN (15 U.S.C. § 1125(a))

21. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 20 of this Complaint.

22. Plaintiff has the exclusive right to market, brand and provide clothing related goods using the LAVISH TRENDS® mark.

23. Defendant by reason of the aforementioned acts, have falsely described, represented and designated the origin of its goods and services. Defendant's activities already have confused the public into believing that Defendant and Plaintiff's clothing goods and accessories come from one and the same source, and Defendant's continued activities are likely to create further confusion and deceive the public concerning the source of the goods/services.

24. Defendant has unfairly profited from the actions alleged herein and will continue to unfairly profit and become unjustly enriched unless and until such conduct is enjoined by this Court.

25. By reason of Defendant's willful acts conducted in conscious disregard for Plaintiff's rights, Plaintiff is entitled to treble damages under 15 U.S.C. § 1117(a).

THIRD CAUSE OF ACTION

COMMON LAW TRADEMARK INFRINGEMENT & UNFAIR COMPETITION

26. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 25 of this Complaint.

27. Defendants' conduct constitutes deception by which Defendants' goods will be palmed off as those of Plaintiff. Such conduct constitutes trademark infringement and unfair competition in violation of the laws of the State of New York.

28. Defendants' unauthorized use of Plaintiff's marks is likely to continue to cause further confusion to the public as to the clothing goods and accessories of the respective parties.

29. By reason of the foregoing, Defendants has infringed and continue to infringe on Plaintiff's common law rights in the LAVISH™ mark and Defendants has become unjustly enriched by such acts of infringement.

30. Defendants' unlawful conduct has been and will continue to be willful or willfully blind to Plaintiff's rights, as Defendants have reason to know of Plaintiff's rights.

FOURTH CAUSE OF ACTION UNJUST ENRICHMENT

31. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 30 of this Complaint.

32. Defendant has unjustly retained profits from the sale of clothing goods and accessories bearing Plaintiff's marks.

33. Defendant's actions constitute unjust enrichment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for relief as follows:

1. Entry of an order and judgment requiring that all defendants, their subsidiaries, officers, agents, servants, employees, owners, and representatives, and all other persons or entities in active concert or participation with them, be preliminarily and, thereafter, permanently enjoined and restrained from (a) using in any manner the trade name, trademark, domain name or other indicia or origin, including in whole or part the term LAVISH™, or any colorable imitation thereof; (b) advertising, operating a website, using business stationary or offering any goods or

services using the trade name, trademark, domain name, URL, or any other indicia of origin including in whole or part the term LAVISH™ and/or LAVISH TRENDS®, or any colorable imitation thereof; (c) otherwise engaging in any acts of unfair competition and infringement which tend to injure Plaintiff's rights in the LAVISH TRENDS® and LAVISH™ marks.

2. That Defendant be required to account to Plaintiff for any and all profits derived by it, and to compensate Plaintiff for all the damages sustained by reason of the acts complained of herein, and that the damages herein be trebled pursuant to the Trademark Act.
3. That Defendant be ordered to deliver up for destruction any and all infringing materials bearing the LAVISH NYC™ mark, and any colorable imitation thereof, in whole or part.
4. That Plaintiff be awarded punitive damages.
5. That Defendants be required to place advertisements or send notifications to past and present customers that it improperly has been using the LAVISH NYC™ mark.
6. That Plaintiff be awarded the cost and disbursements of this action.
7. That Plaintiff have such other and further relief as the Court deems just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a trial by jury as to all issues.

Dated: June 19, 2015
New York, NY

Respectfully submitted,
Santos M. Vilella – Pro Se

Santos M. Vilella Jr.

Santos M. Vilella
Pro Se Plaintiff
230 Clinton Street – Apt. #11C
New York, New York 10002
(347) 290-9905

EXHIBIT A



PHOTO



lavish_trends

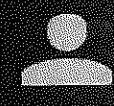
www.lavishtrendsnyc.com

2W



14 likes

lavish_trends #Lavish
#LavishHats #LavishNyc #lavishlogo #LavishTees
#lavishapparel #lavishclothing #lavishlifestyle



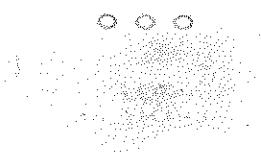


PHOTO



lavish_trends
East 180th Street

3w



27 likes

lavish_trends SHOP at DISTRICT 180
949 East 180th st.
Bronx Nv 10460

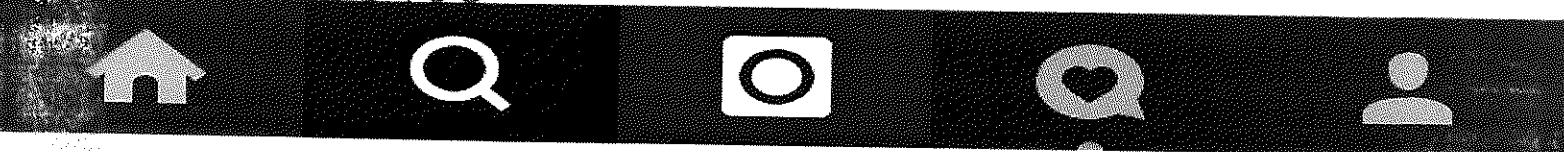


EXHIBIT B

Search

Cart

Lavish Trends NYC

[Home](#) [Shop](#) [Blog](#)



Lavish Trends® Snapback
\$ 30.00



Lavish Trends® Snapback
\$ 30.00



Lavish Trends® Snapback
\$ 30.00



Lavish Trends® Snapback
\$ 30.00



Lavish Trends® Snapback
\$ 30.00



Lavish Trends® Snapback
\$ 30.00



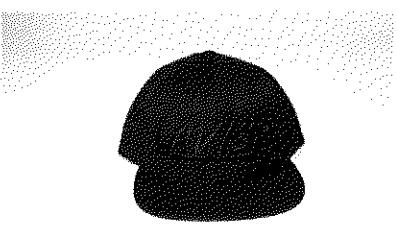
Lavish Trends® Snapback
\$ 30.00



Lavish Trends® Snapback
\$ 30.00



Lavish Trends® Snapback
\$ 30.00



Lavish Trends@Snapback

\$ 30.00



Lavish Trends@Snapback

\$ 30.00



Lavish Trends@Snapback

\$ 30.00



Lavish Trends@Snapback

\$ 30.00



Lavish Trends@Snapback

\$ 30.00

Lavish Trends@Snapback

\$ 30.00

Lavish Trends@Snapback

\$ 30.00



Latest News

[View All News](#)

With a passion for fashion, Santos M Vilella marked his Journey to dominate the clothing industry lavishly. At an early age he discovered his creative strengths and ability to design...

Quick Links

[Search](#)

Follow Us



Copyright © 2015 Lavish Trends NYC | Powered by Shopify

EXHIBIT C



PHOTO



lavish_trends

www.lavishtrendsnyc.com

3w



• • •

21 likes

lavish_trends #LavishTrends #lavish #LTlogo
#LavishNyc #LavishHats #LavishTees #lavishapparel
#lavishclothing #2015 #Nyc #miami #cali #worldwide



EXHIBIT D



United States Patent and Trademark Office

6/18/2015

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)**Trademarks > Trademark Electronic Search System (TESS)***TESS was last updated on Thu Jun 18 03:20:51 EDT 2015*[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [BOTTOM](#) [HELP](#)[Logout](#) Please logout when you are done to release system resources allocated for you.

6/18/2015

Record 1 out of 1[TSDR](#) [View Status](#) [Full Status](#)

(Use the "Back" button of the Internet Browser to return to TESS.)

LAVISH TRENDS

Word Mark	LAVISH TRENDS
Goods and Services	IC 025. US 022 039. G & S: Baseball caps and hats; Crew neck sweaters; Headwear; Hooded pullovers; Hooded sweatshirts; Short-sleeved or long-sleeved t-shirts; Sweaters; Sweatshirts; T-shirts; V-neck sweaters. FIRST USE: 20121201. FIRST USE IN COMMERCE: 20121201
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	86140729
Filing Date	December 11, 2013
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	April 29, 2014
Registration Number	4568162
Registration Date	July 15, 2014
Owner	(REGISTRANT) Vilella, Santos M. INDIVIDUAL UNITED STATES 230 Clinton Street - Suite 11C New York NEW YORK 10002
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [Top](#) [HELP](#)

[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)

TESS

SEARCH

PRODUCTS CONTACT CART

*Lavish
NYC*

LAVISH NYC
COWHIDE
LEATHER
STRAPBACK

\$60.00

Black Cow Hide Leather With Red
Goat Suede UnderBrim and Leather

Strap Medusa Inspired With Jesus
Saves In Red Hebrew letters

ADD TO CART





[Next product](#)

[Home](#) [Products](#) [Contact](#) [Cart](#)

Copyright © 2015 Live Lavish NYC



PHOTO



Lavish
nyc

lavishnyc

LIVE LAVISHNYC.com

27W



• • •

♥ 249 likes

lavishnyc #LavishNYC LIMITED #SALE Right NOW
Online at
LiveLavishNYC.com





PHOTO



Lavish

lavishnyc

LIVELAVISHNYC.com

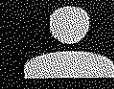
34w



• • •

263 likes

lavishnyc #LavishNYC Customer Appreciation #Cash Giveaway !! Details Are As Is For Our 10th Online Customer we Are Giving Away #200 Dollars Cash Our





PHOTO

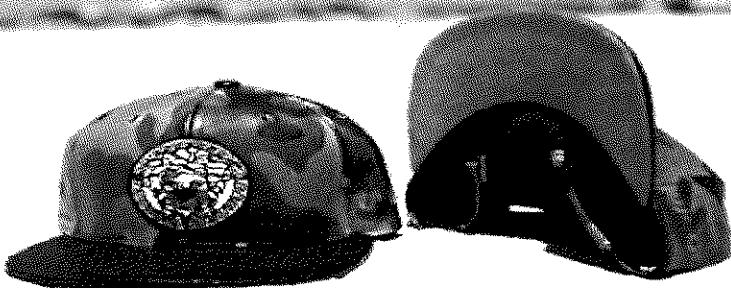
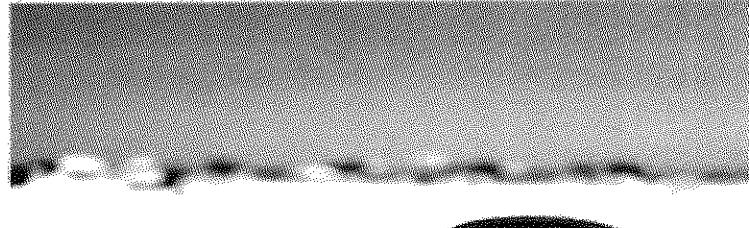
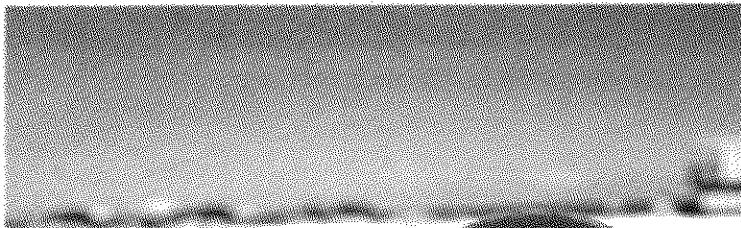
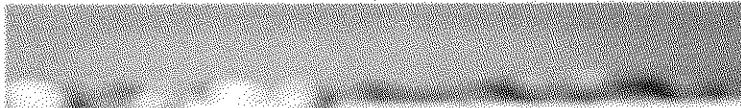


Lavish

lavishnyc

LIVELAVISHNYC.com

29w



• • •

● 289 likes

lavishnyc Thank You All Who Supported & Decided To Live #Lavish Not Average | Experiencing what #HandMade Quality is All About We Are Currently #SOLDOUT RE STOCKING SOON. Around Mid



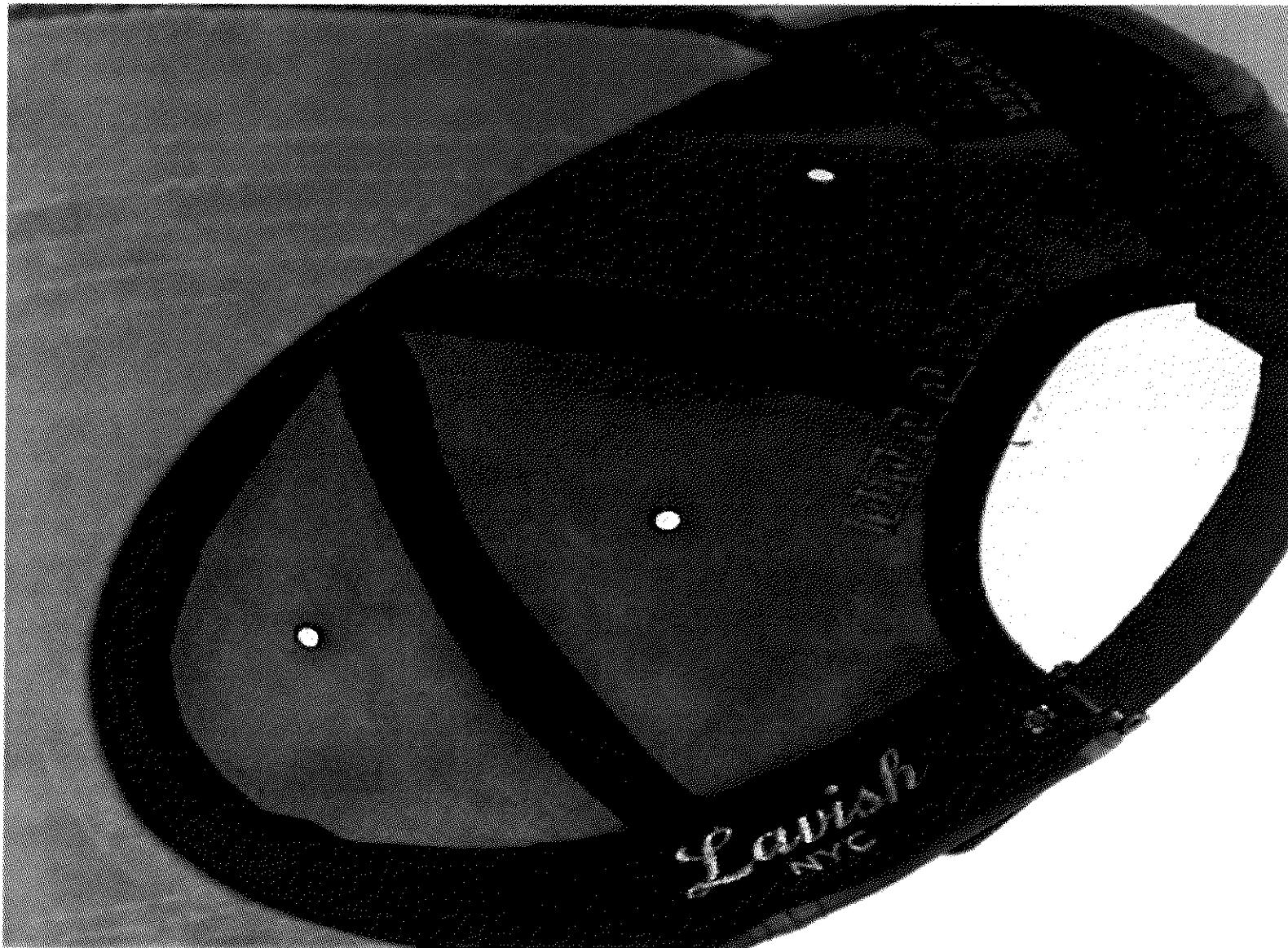


PHOTO

*Lavish***lavishnyc**

LVELAVISHNYC.com

35w

...
...**225 likes**

**lavishnyc #LavishNYC 100% Genuine #HandCrafted
#Strapback Made Out Of The Best #Quality Around
The Globe Including #SnakeSkin #Leather #Suede**

